SAW No.1001/2006

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

D.B. Civil Special Appeal (W) No.1001/06

RPSC, Ajmer Vs. Rajiv Dattatray & Ors.

Date of Order : 17/10/2006

Hon'ble The Chief Justice Shri S.N. Jha
Hon'ble Shri Justice Ajay Rastogi

Shri S.N. Kumawat, for appellant
Shri Sanjeev Prakash Sharma, for respondents

BY THE COURT [PER HON'BLE THE CHIEF JUSTICE] [ORAL]:

This special appeal is directed against the order of learned Single Judge dated 22.08.2006 directing the appellant Rajasthan Public Service Commission (in short, 'the Commission') to forward names of candidates as per requisition of the State Government.

The matter relates to appointment on the post of Additional Public Prosecutor Grade-II. Brief facts of the case are that 30 posts were advertised as per requisition of the State Government. After completing the selection process 30 successful candidates were recommended for appointment and it is stated by Shri S.N. Kumawat, counsel for Commission that all of them have been appointed. Meanwhile, the Government sent requisition to recommend candidates from the reserve

list. The Commission made certain queries from the Government. Case of the Commission is that without replying to the query, the Government sent fresh requisition for 94 posts of Additional Public Prosecutor Grade-II. In the circumstances, the Commission is aggrieved by the direction of the learned Single Judge to recommend names to the Government.

The recruitment on the post of Additional Public Prosecutor Gr.II is governed by Rajasthan Prosecution Subordinate Service Rules, 1978. Rule 22 of the Rules provides that the Commission shall prepare a list of the candidates whom they consider suitable for appointment to the posts concerned, arranged in order of merit, and shall forward the list to the Appointing Authority. In terms of proviso, the Commission is required to keep a reserve list to the extent of 50% of the advertised vacancies. On requisition the names of candidates included in the reserve list can be recommended, in order of merit, for appointment within six months from the date on which the original list was forwarded. The proviso may be quoted in extenso as under:

> “Provided that the Commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The Commission may, on requisition, recommend the names of such

> candidates in the order of merit to the Appointing Authority within six months from the date on which the original list is forwarded by the Commission to the Appointing Authority".

In the instant case, the main list i.e. the original list was forwarded by the Commission to the State Government on 19.10.2005. The requisition to recommend four more candidates was sent by the Government on 16.03.2006 i.e. within six months from the date on which the original list was forwarded.

As seen above, the object of proviso to rule 22 is to facilitate appointment of candidates in the excess of the advertised vacancies, not exceeding 50%, in exigency of service but that can be done within six months of forwarding of the original list. Inasmuch as the rule contemplates preparation of a waiting list, called reserve list, the requisition of the State Government prima facie appears to be in accordance with the Rules. We therefore do not think, the order of the learned Single Judge requires interference by Division Bench. We may however clarify that the order of the learned Single Judge being interim, it goes without saying that the additional recommendation will be subject to the final decision in the writ petition.

Shri S.N. Kumawat however submitted that the advertisement with respect to 94 vacancies as per

fresh requisition of the State Government referred to above is fixed for publication tomorrow and as the writ petition is still pending there may be complication about number of vacancies for which selection is to be made pursuant to the advertisement.

After hearing counsel for parties we observe that a note/corrigendum may be published to the effect that the number of vacancies shall be subject to result of S.B. Civil Writ Petition No.3058/06.

With the above observations, the appeal is disposed of.

It is made clear that the observations hereinabove were intended for disposal of this appeal and they may not be treated as concluded opinion on merit which is to be seen at the final hearing of the writ petition.

[AJAY RASTOGI],J. [S.N. JHA],CJ.

FRBOHRA,JR.P.A.